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09/864,043	05/23/2001	Saadat H. Khan	0012-1	2402

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EXAMINER	
BORLINGHAUS, JASON M	
ART UNIT	PAPER NUMBER
3693	

MAIL DATE	DELIVERY MODE
11/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/864,043	KHAN, SAADAT H.	
	Examiner	Art Unit	
	JASON M. BORLINGHAUS	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 August 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *459,460,464-466,468,469 and 471-473* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *47,459,460,464-466,468,469 and 471* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 459 is rejected under 35 U.S.C. 103(a) as obvious over Walker (US Patent 5,794,207) in further view of Miller (Miller, Michael. *The Complete Idiot's Guide to Online Auctions*. Que. 1999. pp. 1 – 331).

Regarding Claim 459, Walker discloses a (online auction) system for processing the sale and purchase of items, comprising:

a. a storage device (data storage device). (see col. 11, line 40 – col. 14, line 52);

b. a processor (CPU) connected to the storage device. (see col. 11, line 40 – col. 14, line 52; fig. 2); and the storage device storing a program (software) for controlling the processor (see col. 11, line 40 – col. 14, line 52); and the processor operative with the program to:

i. receive sell offers from a seller (counteroffers) and bargain offers (purchase offers) from a buyer, including conditions for purchase (other conditions the buyer requires) and a payment identifier (payment preferences), thereby defining said bargain offer (see col. 8, line 27 – col. 9, line 50; col. 20, line 50 – col. 21, line 67; Claim 1) ;

ii. carry out a bargaining (offer/counteroffer exchange) process with said buyer to arrive at a price for at least one of said items that is agreed on by said buyer and said seller. (see col. 22, line 40 – col. 23, line 17);

iii. arrange for the purchase (payment) of said at least one item by said buyer from said seller at said price. (see col. 20, line 50 – col. 21, line 67).

c. said processor is further operative with the program to: start the bargain process by generating bargain prices (via exchange of CPOs with modified conditions, such as price) for said buyer and said seller continuously until a point is reached where (1) an acceptable price is arrived at or said buyer or (2) said seller stop bargaining. (see col. 22, line 40 – col. 23, line 18);

d. validate a received bargain offer signal (conditional purchase offer – CPO) from said buyer or sell offer signal from seller (seller response) and thereby determine whether said received offer signal meets predetermined validation criteria. (see col. 16, line 12 – col. 17, lines 46; see col. 19, line 12 – 54); and

e. said processor is further operative to determine whether a buyer's offer bargain offer (counter-offer) is less than minimum predetermined criteria. (see col. 22, line 39 – col. 23, line 59).

Walker does not teach a system wherein a notification is transmitted to the buyer indicating that the buyer's bargain offer is less than certain minimum predetermined offer criteria and asks said buyer to send another bargain offer, or quit the bargaining process, or to follow a bargaining recommendation provided by an online shopping assistant; nor notify the buyer or seller concerning the status of shipment in transit, said notification being provided (a) at the time or sale; and (b) periodically in response to a buyer or seller request after purchase of said product.

Miller discloses a system wherein:

- a notification is transmitted to the buyer indicating that the buyer's bargain offer is less than certain minimum predetermined offer criteria (reserve price). (see p. 29); and
- notify the buyer or seller concerning the status of shipment in transit, said notification being provided (a) at the time or sale; and (b) periodically in response to a buyer or seller request after purchase of said product. (see pp. 41 – 42; 275 – 282).

Miller does not explicitly state that the notification asks said buyer to send another bargain offer, or quit the bargaining process, or to follow a bargaining recommendation provided by an online shopping assistant. However, such alternatives

are the only available options based upon notification, as not submitting another bid results in the default of quitting the bargaining process.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker and Miller by incorporating a method by which to transmit notification concerning whether a submitted bargain offer satisfied predetermined offer criteria and tracking status of a shipment, as disclosed by Miller, allowing the purchaser to remain informed about the status of the bargain process and delivery of purchased items.

Claims 460, 464 – 469 and 471 - 473 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker and Miller, as in Claim 459 above, and in further view of ***Official Notice***.

Regarding Claim 460, Walker discloses a system further operative to:

- verify the legitimacy, authenticity and condition of said product. (Walker discloses that the central controller verifies that the seller can provide the specific good requested. Such verification includes verifying that seller is a legitimate and authenticated seller of such items. Furthermore, should the delivered goods not meet all the conditions and terms of the CPO, the central controller, acting as arbiter, verifies the condition of said products. – see col. 7, lines 9 – 12; col. 19 line 13 – col. 20, line 48);

- verify the pricing of products listed by the seller. (Walker discloses verification of price listed in seller counteroffer via authentication of seller posting the counteroffer – see col. 22, line 39 – col. 23, line 18);
- said verification comprising the steps of:
    a. checking product certification (whether product meets conditions of CPO as certified via seller acceptance of CPO) at the time of pick-up or delivery. (see col. 20, lines 31 – 48); and
    b. checking condition of said product at the time of pickup or delivery. (see col. 20, lines 31 – 48).

Walker does not teach a system further comprising obtaining issuance of an authenticity certificate from an authorized appraiser and obtaining a price evaluation from said authorized appraiser.

Examiner takes ***Official Notice*** that authentication of an item by an authorized appraiser, issuance of an authenticity certificate certifying such authenticity, and obtainment of a price evaluation from an authorized appraiser is old and well known in the art of sales and auction, such methodologies are typically employed, although not limited to, instances in which a purchaser is considering buying fine art or antiques.

It would have been obvious to one of ordinary skill in the art to have modified Walker and Miller by incorporating methodologies directed to ensuring authenticity and appraisal value of a potential purchase, as is old and well known in the art, thereby ensuring that the potential purchase item is as advertised and priced by the seller.

Regarding Claims 464 – 466, 468 – 469 and 471 - 473, Walker discloses a system wherein said processor is further operative with the program to:

- permit buyer to request free chances (CPO opportunities) or buy more chances (CPO opportunities) at a predetermined chance purchase price (flat fee). (see col. 20, lines 16 – 39);
- permit buyer to use one or more bargain chances (CPO opportunities) provided by the system to continue bargaining until all chances (CPO opportunities) have been used, said buyer having an election to purchase additional chances (CPO opportunities) for a predetermined purchase price (fee). (see col. 20, lines 16 – 39);
- indicate to the buyer that a bargain price (CPO) generated (transmitted) by said system , upon being accepted by said seller, will remain active, subject to acceptance by said buyer, during a predetermined time period (expiration date), provided that the product or service appointed for purchase remains available. (see col. 13, lines 11 – 29);
- track buyer's accumulation of a predetermined number of purchases (tracking each CPO via the buyer database). (see col. 13, lines 1 –10); and
- providing at least one message (messages) during bargaining (on the CPO), said message being an advertisement. (see col. 20, lines 16 – 30).

Walker does not teach a system wherein said processor is operative to enable the buyer to use discounts to enhance bargaining opportunities; award discounts or promotions; track buyer's accumulation of a predetermined number of purchase points, and notify buyer that said accumulation of purchase points are applicable to provide additional discounts; provide at least one pop-up message during bargaining, said surprise message according an additional discount on the product.

Examiner takes ***Official Notice*** that enabling a buyer to use discounts to enhance bargaining opportunities, such as through the obtainment of a price discount; awarding discounts or promotions; accumulation of purchase points and the awarding of a promotional item, such as a discount, upon accumulation of a predetermined quantity of such points; pop-up messages advertising a discount on a product or other incentive are all old and well known in the art of advertising and promotions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker, Miller and ***Official Notice*** by incorporating traditional advertising and promotional methodologies, as are old and well known, to entice customers to engage to further purchases.

Response to Arguments

Applicant's arguments filed 8/05/09 have been fully considered but they are not persuasive.

Walker Reference

Applicant argues that primary prior art reference, Walker, "does not teach bargaining or negotiating structured to provide an optimum price mutually agreed to by both buyer and seller."

As a preliminary matter, Examiner notes that during examination, "claims … are to be given their broadest reasonable interpretation consistent with the specification, and … claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Bond, 910 F.2d 831, 833 (Fed. Cir. 1990).* However, in examining the specification for proper context, the examiner will not at any time import limitations from the specification into the claims. *CollegeNet, Inc. v. ApplyYourself, Inc., 418 F.3d 1225, 1231 (Fed. Cir. 2005).* Construing claims broadly during prosecution is not unfair to the applicant, because the applicant has the opportunity to amend the claims to obtain more precise claim coverage. *In re Yamamoto, 740 F.2d 1569, 1571 (Fed. Cir. 1984).*

Examiner refutes Applicant's assertion as such claim language was not utilized in the previously presented claim(s). Specifically, the claims are silent in regards to "an optimum price." The closest claim language that the Examiner was able to locate was that the system to "carry out a bargaining process with said buyer to arrive at a price for at least one of said items that is agreed on by said buyer and seller." (see Claim 459). Additionally, claim language indicates that the goal of the bargaining process is to arrive at an "acceptable price" not an "optimal price." (see Claim 459).

Furthermore, even if the claims had claim language stating that the bargaining process continued until "an optimal price" was obtained, the term "an optimal price"

could be broadly construed. For example, Walker discloses that a seller can set a minimum acceptable offer (see col. 23, lines 45 – 59). Broadly construed, any offer above the minimum acceptable offer desired by the seller could be considered "an optimal price."

Applicant argues that the procedure disclosed in Walker "does not provide for negotiations between a buyer and a seller." As the Applicant recounts in his arguments, Walker discloses "[p]otential sellers [are] given the option to respond to a purchase offer with a binding counteroffer" and that "buyer...is given the option of accepting it." Using the broadest reasonable interpretation, this disclosed process is a bargaining or negotiating process.

Applicant argues that the "applicant's system requires that the buyer and seller have an opportunity to consider multiple offers in order to negotiate a purchase price." However, such is not claimed. Walker discloses a buyer issuing a conditional purchase order, a seller responding with a counteroffer and acceptance of the counteroffer. This is a bargaining or negotiating process, in the broadest sense of the term, and satisfies the claim limitation as claimed.

Applicant argues that the amended claims require "the processor of applicant's system to start the bargaining process by continuously generating bargain prices for buyers and sellers". Walker discloses a buyer issuing a conditional purchase order, a seller responding with a counteroffer and acceptance of the offer. This is a continuous generation of bargain prices, as contained in the offers and counteroffers, for the buyers

and sellers. This is the continuous generation of bargain prices for buyers and sellers, in the broadest sense of the term.

Based upon Applicant's assertions and the fact that Applicant has emphasized the word "requires", Examiner wonders whether Applicant is contending that the claimed invention requires certain functions which are only optional in the prior art. Examiner is uncertain how making something required that would otherwise be optional would be considered a non-obvious modification of the prior art.

Furthermore, Applicant argues "claim 459 ***requires*** the processor ... be operative to..." (emphasis original – Applicant's Arguments, p. 11). First, this requirement language is not in the claim language. Second, even if this language from Applicant's arguments was incorporate into the Applicant's claim language, what would be claimed is not that this is a required function but that the processor is required to be operative (i.e. have the capacity) to perform the function. Even if Walker discloses that these are optional functions and not required functions, the processor of Walker is operative to perform the functions.

Official Notice

The Examiner would like to point out that Official Notice statement(s) were used in the office action mailed on 5/12/09 to indicate that certain concept(s), technology(s) and/or methodology(s) are old and well known in the art. Per MPEP 2144.03(c), since applicant has not attempted to traverse such Official Notice statement(s), Examiner is

taking the asserted common knowledge and/or well-known statement to be admitted prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason M Borlinghaus/
Primary Examiner, Art Unit 3693
November 22, 2009